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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 403

ESTATE OF ISADORE ZELLERBACH, DECEASED, J.
DAVID ZELLERBACH AND HAROLD L. ZELLERBACH,
EXECUTORS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 136-157) is reported at 9 T. C. 89. The opinion of the Court of Appeals (R. 186) is reported at 169 F. 2d 275.

JURISDICTION

The judgment of the Court of Appeals was entered on August 12, 1948. (R. 187.) The petition for a writ of certiorari was filed on November 9, 1948. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254.

(1)

QUESTIONS PRESENTED

1. Whether the undistributed income of the taxpayer estate in 1942 and 1943 was currently distributable to the residuary legatees as a matter of present right under local law with the consequence that the taxpayer is entitled to deduct in those years the undistributed income under Section 162 (b) or (c) of the Internal Revenue Code.

2. Whether the bequest of the decedent's residuary estate was to be paid, credited, or distributed at intervals with the result that Section 162 (d) (1) of the Internal Revenue Code does not apply.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and Regulations are printed in the Appendix, *infra*, pp. 20-30.

STATEMENT

The facts by the Tax Court (R. 137-145) may be summarized as follows:

On September 2, 1941, the will of Isadore Zellerbach, who died August 7, 1941, was admitted to probate by the Superior Court of California in and for the City and County of San Francisco. After bequests of \$5,000 to each of his eight grandchildren, the testator's will gave, devised, and bequeathed all the rest, residue, and remainder of testator's estate as follows: An undivided three-sixths thereof to his widow, Jennie B. Zellerbach, and an undivided one-sixth to each of his three children, J. David, Harold L., and Claire.

The executors were given full, absolute, and complete power and authority to sell, mortgage, exchange or otherwise dispose of or deal with the whole or any portion of the estate according to their judgment and discretion without any court order. The will made no provision for the distribution of the income received by the estate during the period of administration. (R. 137-138.)

On November 25, 1942, the executors filed with the Probate Court a petition for the distribution of \$181,000 from the income of the estate of approximately \$317,000 received during the year 1942 as follows: \$22,000 to the widow and \$53,000 to each of the three children. The petition stated in part that the total value of the estate as shown by the inventory and appraisement was \$4,754,671.56, and that "it is not proposed at this time to distribute any of the corpus of the residue of the estate, nor any income, save and except that hereinabove described." (R. 138-139.)

After hearing, the Probate Court entered an order dated December 7, 1942, in which it found as follows (R. 139):

* * * that the time for filing claims against said estate has expired; that all claims which have been filed have been allowed, approved and paid; that the federal estate tax, as shown by the return, has been paid; that the State Controller of the State of California has consented in writ-

ing to the said distribution; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of said executors to pay all debts and expenses of administration; * * *

The order authorized payment "from the income of said estate, for the calendar year 1942, the total sum of \$181,000," payable \$22,000 to the widow and \$53,000 to each of the three children of decedent. (R. 139.)

The distribution of \$181,000 was paid \$180,297.85 out of income and \$702.15 out of corpus. (R. 139.)

On November 25, 1942, the executors filed another petition with the Probate Court praying for authority to distribute from the corpus of the estate certain shares of stock of Crown Zellerbach Corporation and of Rayonier Incorporated, one-half thereof to the widow and one-sixth to each of the three children of decedent. After hearing, the Probate Court entered an order dated December 8, 1942, authorizing the executors to make distribution of the stock as prayed for. The fair market value of the stock at the time of its distribution was \$1,146,000. (R. 140.)

On December 31, 1942, all the distributions authorized by the Probate Court during the year 1942 had been made. (R. 140.)

An income tax return for the year 1942 was filed for the estate, showing income of \$322,756.33, from which was deducted \$181,000 as the amount distributable to beneficiaries, leaving a net income (taxable to fiduciary) of \$141,756.33, and disclosing a tax liability of \$97,606.47. On December 14, 1943, an amended income tax return was filed for the year 1942 showing income of \$322,756.33, from which was deducted \$315,323.74 as the amount distributable to beneficiaries, leaving a net income (taxable to fiduciary) of \$7,432.59 and disclosing a tax liability of \$1,619.78. (R. 140.)

The total net income of the estate for 1942, before any allowance for income distributed to beneficiaries during the year, was \$324,209.38, which sum is composed of ordinary income in the amount of \$316,595.74 and capital gains in the amount of \$7,613.64. (R. 141.)

On their income tax returns for 1942 the widow reported \$22,000, and each of the three children reported \$53,000, as distributable income from the estate. On January 24, 1944, the widow filed an amended income tax return in which she reported as having been distributed to her the amount of \$157,661.87, representing one-half of all of the income of the estate for the year 1942. (R. 141.)

Pursuant to petitions of the executors filed June 18, 1942, and August 4, 1943, the Probate Court, on July 7, 1943, and August 18, 1943, entered orders authorizing the executors to make partial distributions of the assets of the estate, consisting respectively of a parcel of unimproved real property in San Francisco and shares of stock of Dreamland Auditorium, Ltd., three-sixths to the widow and one-sixth to each of the three children. The fair market values of these properties at the time of distribution were respectively \$27,500 and \$3,450. (R. 141-142.)

On November 30, 1943, the executors filed a petition with the Probate Court for authorization to make a partial distribution consisting of \$96,000, of which \$32,000 was to be distributed to each of the three children of decedent. In the petition it was stated that the income for 1943 would approximate \$191,500; that the executors desired to distribute \$96,000 thereof; and that it was not proposed to distribute any of the corpus of the residue of the estate, nor any income save and except the \$96,000. No portion of the income was requested to be distributed to the widow. On December 13, 1943, the Probate Court entered an order authorizing the income distribution of \$96,000, as prayed for. The distribution of \$96,000 was paid \$94,164.15 out of income and \$1,835.85 out of corpus. (R. 142.)

The income tax return filed for the estate for 1943 showed income tax income of \$203,895.74

and victory tax income of \$200,811.46, from which \$185,328.30 was deducted as the amount distributable to beneficiaries, leaving an income tax net income of \$18,567.44 and a victory tax net income of \$15,483.16. The total income and victory tax liability shown by the return was \$6,712.28. The return contained a schedule allocating \$92,664.15 of the distributable amount of \$185,328.30 to the widow, and \$30,888.05 to each of the three children. (R. 142-143.)

The widow included in her federal income tax return for 1943, as income received by her from the estate, the sum of \$92,664.15. (R. 143.)

The total net income of the estate for 1943, before any allowance for income distributed to beneficiaries during that year, was \$206,864.94, which sum was composed of ordinary income of \$188,328.30 and capital gain of \$18,536.64. (R. 143.)

On these facts the Tax Court held that, in determining its taxable net income for 1942 and 1943, the taxpayer estate is entitled to deduct only \$180,297.85 in 1942 and \$94,164.15 in 1943, representing the amounts of income actually distributed to the residuary legatees in those years. (R. 157.)

The Court of Appeals affirmed *per curiam* on the grounds and for the reasons stated in the Tax Court's opinion. (R. 186.)

ARGUMENT

The judgment of the Court of Appeals is not asserted by the taxpayer estate to be in conflict with a decision of this Court or of any other federal court of appeals. As we shall show, the judgment is correct under Section 162 (b), (c), and (d) (1) of the Internal Revenue Code (Appendix, *infra*, pp. 25-27) with the result that further review of the case by this Court does not seem to be warranted.

(1) In computing its net income subject to tax under Section 161 of the Internal Revenue Code (Appendix, *infra*, p. 24), Section 162 (b) of the Code permits an estate during the period of administration or settlement to deduct its income for the taxable year "which is to be distributed currently by the fiduciary to the legatees," including income for the year which "becomes payable" to the legatees within the year,¹ provided that the

¹ The provision with respect to income which becomes payable within the year was added by Section 111 (b) of the Revenue Act of 1942, c. 619, 56 Stat. 798, to the existing statute. S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 71-72 (1942-2 Cum. Bull. 504, 559-560), shows that it was designed to clarify the law with respect to the taxation of income of an estate or trust which within the taxable year becomes payable to legatees as part of an accumulation of income held until the happening of some event which occurs within the year, as where accumulated income is payable to a residuary legatee on termination of the estate or to a beneficiary upon his reaching a specified age. See *Carlisle v. Commissioner*, 165 F. 2d 645 (C. C. A. 6th); cf. *Anderson's Estate v. Com-*

amount allowed as a deduction to the estate is included in the income of the legatees for that year, whether distributed to them or not.

There was no express provision in the testator's will in this case that the income received by the estate during the period of administration was to be distributed currently to the residuary legatees named by him, and actually the will implies that distribution of the income was to be discretionary with the executors. (R. 138.) Thus, in order for the estate to be entitled to deductions in the amounts of the undistributed income in 1942 and 1943,² the legatees must have had a *recognized present right* in those years under the local law to obtain the income or to compel its distribution. Section 29.162-2 (b) of Treasury Regulations 111 (Appendix, *infra*, pp. 29-30). See *Plimpton v. Commissioner*, 135 F. 2d 482, 485-486 (C. C. A. 1st); *Commissioner v. First Trust & D. Co.*, 118 F. 2d 449, 452 (C. C. A. 2d); *Commissioner v. Stearns*, 65 F. 2d 371, 373 (C. C. A. 2d), certiorari denied, 290 U. S. 670; cf. *Freuler v. Helvering*, 291 U. S. 35, 42.

The Court of Appeals correctly affirmed the holding of the Tax Court in this case (R. 152)

missioner, 126 F. 2d 46 (C. C. A. 9th), certiorari denied, 317 U. S. 653, and *Commissioner v. Bishop Trust Co.*, 136 F. 2d 390 (C. C. A. 9th).

² Only the *undistributed* income for 1942 and 1943 is involved in this case. The estate has been allowed deductions in the amount of its income which was distributed to the legatees in 1942 and 1943. (R. 12, 15, 140.)

that, under California law, the legatees had no present established right in 1942 and 1943 to the undistributed income of the estate for those years, but only a "potential right" thereto which in those years was not recognized or enforced; and thus that the estate was not entitled to deduct the undistributed income in those years.

Although, under Section 300 of the California Probate Code (Appendix, *infra*, p. 20), title to a decedent's property passes at death to his devisees and legatees, Section 300 expressly withholds the right from the devisees and legatees to have possession; this is placed in the executors, subject to the control of the superior court, for purposes of administration and paying decedent's debts. *Estate of Palm*, 68 Cal. App. 2d 204, 212; *Dabney v. Dabney*, 54 Cal. App. 2d 695, 699. A decree of distribution releases the property described in the decree from the administration to which it was subject and transfers possession to the legatees named, who are thereafter entitled to sue for and recover their respective shares. Section 1021 of the Probate Code (Appendix, *infra*, p. 22); *Bates v. Howard*, 105 Cal. 173, 183. The mere fact that legal title to what would ultimately become the residuary estate after administration had been concluded vested in the legatees at decedent's death is not dispositive, their title being contingent upon an order of distribution. *Dunlop v. Commissioner*, 165 F. 2d 284, 287 (C. C. A.

8th). Under Section 162 (b) the question is whether the income was currently distributable, that is, whether the legatees were entitled as a matter of present right to take possession of the income in the years in which it was received by the estate. Sections 300 and 1021 withhold this right from the legatees until the superior court has ordered distribution. Cf. *Commissioner v. First Trust & D. Co.*, 118 F. 2d 449, 452 (C. C. A. 2d).

To be sure, under Section 1000 of the California Probate Code (Appendix, *infra*, p. 21), the executors or the legatees have a right to petition the court for distribution of any part of the estate, and, after notice has been given to interested parties as provided in Section 1200 (Appendix, *infra*, pp. 22-24), to have a hearing on the petition, at which interested parties may appear to object (*Dabney v. Dabney*, 54 Cal. App. 2d 695, 701). Jurisdiction of the court to hear the petition and to order distribution depends on the giving of the statutory notice. *Estate of Dam*, 126 Cal. App. 70, 73-76; *Lilienkamp v. Superior Court*, 14 Cal. 2d 293, 298, 301. Section 1001 of the Probate Code (Appendix, *infra*, pp. 21-22) provides that if, *at the hearing*, it is shown that the estate is "but little indebted," that all inheritance taxes have been paid or that the designated state official has consented in writing to the distribution, and that the part of the estate,

sought in the petition to be distributed, may be distributed without loss to creditors, or injury to the estate or to any interested person, the court "shall make an order" of distribution,³ but only if the statutory facts have been established at the hearing and have been found (cf. *Estate of Dutard*, 147 Cal. 253, 255), is an order for partial distribution mandatory (*Estate of Stephenson*, 65 Cal. App. 2d 120, 123).

Since none of the steps designated by the California Probate Code as prerequisites to an order of distribution were taken in this case with respect to the income in excess of \$181,000 in 1942 and \$96,000 in 1943, the residuary legatees were not entitled to orders for distribution in those years of the income of the estate in excess of those amounts, and under Section 1021 in the absence of such orders they were not entitled to demand, sue for, and recover this income in those years. It follows that the legatees had no recognized present right to obtain the income under local law and that it was not currently distributable within the meaning of Section 162 (b) of the Internal Revenue Code and Section 29.162-2 (b)

³ Cf. Sections 1010 and 1011 of the California Probate Code, which authorize the filing of a petition for a ratable distribution, after the time for filing claims has expired and all uncontested claims have been paid or secured but the estate cannot be closed finally, and directing, after similar notice, hearing, and the finding of the same facts as are required under Section 1001, the entry of an order for a ratable distribution.

of Treasury Regulations 111. See *Estate of Cohen v. Commissioner*, 8 T. C. 784, 786; *Estate of Igoe v. Commissioner*, 6 T. C. 639, 645-646.

The findings by the Probate Court of the statutory facts in the decrees for distribution of \$181,000 in 1942 and \$96,000 in 1943 (see Pet. 53-54, 57-59) did not constitute findings with respect to the income not covered in those decrees, which is here in question, and accordingly would not meet the terms of Section 1001 of the Probate Code, which requires the facts to appear at the hearing on the petition as to which an order is made. Further, even if the statutory facts with respect to the undistributed income could be taken as settled by findings made on petitions for distributions of other amounts, the superior court had no jurisdiction to order distribution of the remaining income in 1942 and 1943 because no petitions for distribution were filed, no notices of hearings were given, no opportunity was given to interested persons to object, and no hearings were held. In the California cases which the taxpayer cites (Pet. 54-59), the preliminary statutory requisites had occurred, the statutory facts had been shown at the hearing, and thus the beneficiaries were entitled to orders of distribution. That situation does not obtain in this case.

It may be true (Pet. 59-61) that distribution of the remaining income in 1942 and 1943 would have been ordered by the probate judge

in charge of the taxpayer estate in the exercise of his discretion (cf. his testimony at R. 119-123), if petitions for distribution of the remaining income had been filed in those years, if the required notice had been given, if hearings had been held, and if the statutory facts had been shown at the hearings. However, the probability that the income could have been made currently distributable in 1942 and 1943, if the proper steps had been taken, is not sufficient under Section 162 (b) and the regulation, which require that the income be distributable as a matter of present right.

It is not disputed (see Pet. 66) that the widow as a residuary legatee named by the testator had a right to have distribution of her share of the undistributed income of 1942 and 1943 *at some time*, but that is not dispositive under Section 162 (b) which requires a *present* right to current distribution in those years. The widow's right to current distribution in 1942 and 1943 depended on entry of orders of distribution in her favor, which were not entered in those years.

(2) Section 162 (c) of the Code authorizes an estate during the period of administration to deduct its income for the taxable year which is "properly paid or credited" during the year to any legatee, provided the amount allowed as a deduction is included in the legatee's income. The Court of Appeals properly affirmed the Tax

Court's holding (R. 152) that there was no evidence that the undistributed income of 1942 and 1943, which of course was not "paid" during those years, was "properly credited" to the legatees within those years as required by Section 162 (c) in order to be deductible.

The taxpayer's contention (Pet. 65-66) apparently is that the undistributed income was "credited" to the widow because, in the petitions filed in 1942 and 1943 for distribution of the part of the income actually paid, the executors by inference admitted that the remaining parts of the income were held by them for the widow. Even though this inference is made, it would not amount to a "credit" of the income within the meaning of Section 162 (c), which requires an allocation or setting aside of the income in such a way that it is unconditionally available to the legatees or beneficiaries.* The undistributed income would have been unconditionally available to the widow only if orders of distribution had been entered in 1942 and 1943 in her favor.

As the Tax Court pointed out (R. 152-153), *Estate of Igoe v. Commissioner*, 6 T. C. 639, on which the taxpayer relies here (Pet. 65-66), involved specific credits to the accounts of the bene-

* *Frank's Trust of 1931 v. Commissioner*, 165 F. 2d 992 (C. C. A. 3d); *Lynchburg Trust & S. Bank v. Commissioner*, 68 F. 2d 356, 359 (C. C. A. 4th), certiorari denied, 292 U. S. 640; *Commissioner v. Stearns*, 65 F. 2d 371, 373 (C. C. A. 2d), certiorari denied, 290 U. S. 670.

ficiaries, the amounts of which were found (p. 647) to be available unconditionally to the beneficiaries. There are no comparable facts in this case.

(3) There is no merit to the taxpayer's contention (Pet. 73-82) that, under Section 162 (d) (1) of the Internal Revenue Code, the distributions of corpus made in 1942 and 1943 pursuant to order of the Probate Court should be deemed to be distributions of income, and deductible under Section 162 (c) as income "properly paid."

By express exception, Section 162 (d) (1), which was added by Section 111 (c) of the Revenue Act of 1942, c. 619, 56 Stat. 798, has no application to gifts, bequests, devises, or inheritances which are not to be paid, credited, or distributed at intervals. As explained in S. Rep. No. 1631, 77th Cong., 2d Sess., p. 72 (1942-2 Cum. Bull. 504, 560), it therefore does not apply to a lump sum gift or bequest.^{*} As the Tax Court held (R. 154-

^{*} S. Rep. No. 1631, *supra*, p. 72, reads as follows:

"Section 162 of the Code is proposed to be amended by the addition of a new subsection (d), which contains three paragraphs. Paragraph (1) is similar to section 162 (d) as proposed to be added by section 110 of the bill passed by the House, but provides more detailed rules for allocating income among legatees and beneficiaries in cases in which amounts can be paid, credited, or distributed out of other than income.

"Section 162 (d) (1) applies to all cases in which the executor or trustee can or must (by the terms of the trust instrument or will) pay the whole or any part of a gift, bequest, devise, or inheritance out of other than income, except

155), the will in this case merely made a lump sum bequest of the decedent's residuary estate, incorporating no direction for payment, credit, or distribution of any amounts at intervals, and having no similarity to an annuity. The bequest was accordingly of the type specifically excluded from the operation of Section 162 (d) (1). See Section 29.162-2 (a) of Treasury Regulations 111 (Appendix, *infra*, pp. 28-29). Even though, under Sections 1000 and 1010 of the California Probate

that no income is to be allocated under it to a legatee, heir, or beneficiary of a lump sum gift, bequest, devise, or inheritance. It applies in all cases of annuities where any deficiency in the amount to be paid can be made up by a payment out of corpus of the trust. It also applies in cases where amounts are to be paid or credited at intervals and the executor or trustee has discretion whether to pay or credit such amounts out of income or corpus, regardless of the source (income or corpus) to which the executor attributes such amount. * * *

Section 162 (d) (1) was enacted to complement Section 22 (b) (3) of the Internal Revenue Code, as amended by Section 111 (a) of the Revenue Act of 1942 (26 U. S. C. 22), and the basic purpose of both amendments was to change the rule of *Burnet v. Whitehouse*, 283 U. S. 148, and *Helvering v. Pardee*, 290 U. S. 365. S. Rep. No. 1631, *supra*, p. 70; H. Rep. No. 2333, 77th Cong., 2d Sess., pp. 66-68 (1942-2 Cum. Bull. 372, 424-425). See also *Carlisle v. Commissioner*, 165 F. 2d 645 (C. C. A. 6th). The *Whitehouse* and *Pardee* cases had held that recurrent amounts received under a gift, bequest, or by inheritance as an annuity, where the amounts were to be paid at all events whether from income or corpus, were not taxable income of the beneficiary under Section 22 (b) (3) and were not deductible by the fiduciary under Section 162 to the extent of the income distributed in payment of such annuity.

Code, it was possible to make partial distributions of the residuary bequest at intervals in certain circumstances, rather than to distribute the residuum all at one time (Pet. 81), the lump sum bequest is not thereby converted into one which, under the terms of the will (see S. Rep. No. 1631, p. 72, fn. 5, *supra*), was to be distributed at intervals. Further, the California Code sections do not purport to change the character of a lump sum bequest and do not direct that such a bequest must be distributed periodically or at intervals.

The judgment in this case is supported by Section 29.162-2 (a) of Treasury Regulations 111. The portion of the regulation quoted by the taxpayer (Pet. 80) deals with the method of allocating income in cases to which Section 162 (d) (1) applies, and has no relevance in a case like the present where the section does not apply. A reading of G. C. M. 24702, 1945 Cum. Bull. 241, on which the taxpayer relies here (Br. 76-79), shows that it was not concerned with Section 162 (d) (1) in any way; it merely ruled that an amount, distributed by an estate out of its income of the year in which the residue became payable, was taxable income to the residuary legatee and deductible by the estate under Section 162 (b) of the Code, as amended by Section 111 (b) of the Revenue Act of 1942. Cf. fn. 1, *supra*, p. 8.

CONCLUSION

Since the judgment in this case is correct and is not in conflict with any decision, the question in this case is not presently of great importance. The petition for a writ of certiorari should be denied.

Respectfully submitted.

✓ | PHILIP B. PERLMAN,
Solicitor General.

✓ | THERON LAMAR CAUDLE,
Assistant Attorney General.

✓ | ELLIS N. SLACK,
HELEN GOODNER,

Special Assistants to the Attorney General.

DECEMBER, 1948.

APPENDIX

California Probate Code (Deering's California Codes, Annotated, 1944):

§ 300. *Title to decedent's estate: [When property passes: Possession and control thereof: Liability for administration expenses, debts and family allowances]*. When a person dies, the title to his property, real and personal, passes to the person to whom it is devised or bequeathed by his last will, or, in the absence of such disposition, to the persons who succeed to his estate as provided in Division II of this code; but all of his property shall be subject to the possession of the executor or administrator and to the control of the superior court for the purposes of administration, sale or other disposition under the provisions of Division III of this code, and shall be chargeable with the expenses of administering his estate, and the payment of his debts and the allowance to the family, except as otherwise provided in this code.

§ 956. *Closing administration: [Payment of legacies: Distribution: Debts unpaid: Condition of estate]*. If all of the debts have been paid by the first order for payment, the court must direct the payment of legacies and the distribution of the estate among the persons entitled, as provided in the next chapter; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for such time as may be reasonable.

§ 1000. *Petition [by person entitled: Hearing: Notice: Persons entitled to oppose]*. At any time after the lapse of four months from the issuing of letters testamentary or of administration, the executor or administrator, or any heir, devisee or legatee, or the assignee, grantee or successor in interest of any heir, devisee or legatee, may petition the court to distribute a legacy, devise or share of the estate, or any portion thereof, to any person entitled thereto, upon such person giving a bond as hereinafter provided. The clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by section 1200 of this code. When the petitioner is not the executor or administrator, notice must be given to the executor or administrator by citation. An executor or administrator, not petitioning, or any person interested in the estate may resist the application.

§ 1001. *Allowance of distributee's share: [Facts shown at hearing; Indebtedness to estate: Taxes: Possibility of loss or injury: Order for delivery: Bond of recipient]*. If, at the hearing, it appears that the estate is but little indebted and that all inheritance taxes payable in said proceeding have been paid, or that the State Controller, an inheritance tax attorney, or an assistant inheritance tax attorney has in writing consented to said distribution and the legacy, devise or share of the estate, or any portion thereof, may be distributed to the person entitled thereto, without loss to the creditors or injury to the estate or any person interested therein, the court shall make an order requiring the executor or administrator to deliver the legacy, devise or share of

the estate or such portion thereof as the court may designate, to the person entitled thereto, upon receiving from such person a bond executed by him, and payable to the executor or administrator in such sum as the court may designate, with sureties to be approved by the judge, and conditioned for the payment, whenever required, of the proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate, so ordered to be delivered. When the time for filing or presenting claims has expired, and all uncontested claims have been paid or are sufficiently secured by mortgage or otherwise, and the court is satisfied that no injury can result to the estate, the court may dispense with the bond.

§ 1021. *Decree of distribution: [Naming of persons and shares: Right to recover shares: Conclusiveness of decree]*. In its decree, the court must name the persons and the proportions or parts to which each is entitled, and such persons may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree, when it becomes final, is conclusive as to the rights of heirs, devisees and legatees.

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§ 1200. *Mode of giving notice in certain instances: [Posting of notice: Notice by mail: Proof of notice: Effect of finding.]* Upon the filing * * * of a petition for partial or ratable or final distribution, * * * and in all cases in which notice is required and no other time or method is prescribed by law or by court or judge, the clerk shall set the same for hearing by the

court and shall give notice of the petition or application or report or account by causing a notice to be posted at the courthouse of the county where the proceedings are pending, at least ten days before the day of hearing, giving the name of the estate, the name of the petitioner and the nature of the application, referring to the petition for further particulars, and notifying all persons interested to appear at the time and place mentioned in the notice and show cause, if any they have, why the order should not be made.

Notice by mail. At least ten days before the time set for the hearing of such petition, account or report, the petitioner or person filing the account or desiring the confirmation of a report of appraisers must cause notice thereof to be mailed to the executor or administrator, when he is not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or to their attorneys, if they have appeared by attorney), who have requested notice or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, addressed to them at their respective post-office addresses given in their requests for special notice, if any, otherwise at their respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such persons.

[*Proof of notice: Effect of finding.*] Proof of the giving of notice must be made at the hearing; and if it appears to the satisfaction of the court that said notice has been regularly given, the court shall

so find in its order, and such order, when it becomes final, shall be conclusive upon all persons.

Internal Revenue Code:

SEC. 161. IMPOSITION OF TAX.

(a) *Application of Tax.*—The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and Payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

* * * * *

(26 U. S. C. 161.)

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) [as amended by Section 111 (b), Revenue Act of 1942, c. 619, 56 Stat. 798] There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection, "income which is to be distributed currently" includes income for the taxable year of the estate or trust which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or

credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(d) [as added by Section 111 (c), Revenue Act of 1942, c. 619, 56 Stat. 798] *Rules for Application of Subsections (b) and (c).*—For the purposes of subsections (b) and (c)—

(1) *Amounts Distributable Out of Income or Corpus.*—In cases where the amount paid, credited, or to be distributed can be paid, credited, or distributed out of other than income, the amount paid, credited, or to be distributed (except under a gift, bequest, devise, or inheritance not to be paid, credited, or distributed at intervals) during the taxable year of the estate or trust shall be considered as income of the estate or trust which is paid, credited, or to be distributed if the aggregate of such amounts so paid, credited, or to be distributed does not exceed the distributable income of the estate or trust for its taxable year. If the aggregate of such amounts so paid, credited, or to be distributed during the taxable year of the estate or trust in such cases exceeds the distributable income of the estate or trust for its taxable year, the amount so paid, credited, or to be distributed to any legatee, heir, or beneficiary shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed in an amount which bears the same ratio to the amount of such distributable income as the amount so paid, credited, or to be distributed to the legatee, heir, or beneficiary bears to the aggregate of such

amounts so paid, credited, or to be distributed to legatees, heirs, and beneficiaries for the taxable year of the estate or trust. For the purposes of this paragraph "distributable income" means either (A) the net income of the estate or trust computed with the deductions allowed under subsections (b) and (c) in cases to which this paragraph does not apply, or (B) the income of the estate or trust minus the deductions provided in subsections (b) and (c) in cases to which this paragraph does not apply, whichever is the greater. In computing such distributable income the deductions under subsections (b) and (c) shall be determined without the application of paragraph (2).

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(26 U. S. C. 162.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.162-1. INCOME OF ESTATES AND TRUSTS.—

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From the gross income of the estate or trust there are also deductible (either in lieu of, or in addition to, the deductions referred to in the preceding paragraph of this section) the following:

* * * * *

(b) Any income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to a legatee, heir, or beneficiary, whether or not such income is actually distributed. For this purpose, it is provided in section 162 (b) that "income which is to be distributed currently" includes income of the estate or trust which,

in any taxable year prior to the taxable year of the trust in which the date of distribution occurs (the beneficiary's twenty-first birthday or his prior death) is not income which becomes payable within such prior taxable year but is income which becomes payable in the taxable year of the trust in which the date of distribution occurs. In any case, income becomes payable at a date not later than the date it is actually paid for the use of the distributee.

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